

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-286 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8377
Table of Allotments,
FM Broadcast Stations.
(Jeffersontown, Shelbyville)
and Richmond, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 29, 1993; Released: November 26, 1993

By the Assistant Chief, Allocations Branch:

Comment Date: January 18, 1994

Reply Comment Date: February 2, 1994

1. The Commission has before it for consideration the petition for rule making filed by Channel Chek, Inc. ("Chek"), licensee of Station WLSY(FM), Channel 269A, Jeffersontown, Kentucky, WCBR Radio, Inc. ("WCBR"), licensee of Station WMCO(FM), Channel 269A, Richmond, Kentucky, and Shelby County Broadcasting, Inc. ("SCBI"), licensee of Station WTHQ(FM), Channel 267A, Shelbyville, Kentucky, (jointly referred to as "petitioners"). Petitioners propose the substitution of Channel 268C3 for Channel 269A at Richmond, Kentucky, and modification of Station WMCO(FM)'s license to specify operation on the higher powered channel. In order to accommodate the upgrade at Richmond, petitioners also request the substitution of Channel 267A for Channel 269A at Jeffersontown, Kentucky, and the modification of Station WLSY(FM)'s license to specify Channel 267A; and the substitution of Channel 269A for Channel 267A at Shelbyville, Kentucky, and the modification of Station WTHQ(FM)'s license to specify Channel 269A. Petitioners state their intentions to apply for the respective channels, if allotted.

2. In support of their proposal, petitioners claim that the proposed Class A channel substitutions will enable Stations WLSY(FM) and WTHQ(FM) to operate as 6 kilowatt facilities, and Station WMCO(FM) will be able to operate as a 25 kilowatt facility. Petitioners note that these stations are precluded from upgrades on their present channels with the existing operation.

3. An engineering analysis has confirmed that all aspects of the proposal comply with the Commission's minimum distance separation requirements. Channel 268C3 can be allotted to Richmond, Kentucky, in compliance with the Commission's minimum distance separation requirements

with a site restriction of 2.7 kilometers (1.7 miles) southwest of the community at its authorized transmitter site,¹ in order to avoid a short-spacing to the licensed site of Station WQUT(FM), Channel 268C, Johnson City, Tennessee. Channel 267A can be allotted to Jeffersontown, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.8 miles) northeast,² in order to avoid a short-spacing to Station WKKG(FM), Channel 268B, Columbus, Indiana, and to a construction permit for Station WRZI(FM), Channel 268A, Vine Grove, Kentucky. Channel 269A can be allotted to Shelbyville, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) east,³ in order to avoid a short-spacing to Station WKYL(FM), Channel 271A, Lawrenceburg, Kentucky.

4. We shall propose to modify the license of Station WMCO(FM), Richmond; Station WLSY(FM), Jeffersontown, and Station WTHQ(FM), Shelbyville, to specify operation on Channel 268C3 at Richmond, Channel 267A at Jeffersontown, and Channel 269A at Shelbyville, respectively, in accordance with Section 1.420(g)(3) of the Commission's Rules, without entertaining other expressions of interest or requiring the party to demonstrate the availability of an additional equivalent class channel for use by any such interested parties.

5. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter site, petitioners state that they have a joint agreement consenting to share the cost for a change in the authorized transmitter sites for Station WLSY at Jeffersontown and Station WTHQ(FM) at Shelbyville, as well as the proposed exchange of channels. Therefore, no *Order to Show Cause* is necessary.

6. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Jeffersontown, Kentucky	269A	267A
Richmond, Kentucky	269A	268C3
Shelbyville, Kentucky	267A	269A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **January 18, 1994**, and reply comments on or before **February 2, 1994** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washing-

¹ The coordinates for Channel 268C3 at Richmond are North Latitude 37-44-09 and West Longitude 84-16-05.

² The coordinates for Channel 267A at Jeffersontown are North

Latitude 38-13-41 and West Longitude 85-30-30.

³ The coordinates for Channel 269A at Shelbyville are North Latitude 38-12-48 and West Longitude 85-09-13.

ton, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harry F. Cole
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036
(Counsel for Joint Petitioners)

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Channel Chek, Inc.	WCBR Radio, Inc.
581 South Third Street	P.O. Box 0
Louisville, KY 40203	Richmond, KY 40475
(Licensee for WLSY(FM))	(Licensee for WMCQ(FM))

Shelby County Broadcasting, Inc.
301 Iola Road
Louisville, KY 40207
(Licensee for WTHQ(FM))

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.